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SUBJECT: TURKEY PASSES ITS NUCLEAR ENERGY LAW

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11. (SBU) SUMMARY: The Turkish Parliament passed the long pending Nuclear Energy Law on October 8, after just two days of debate and despite criticism from opposition parties and NGO's. The law is expected to be approved by the President. The law establishes an extremely rapid selection process, under which a tender will be issued within two months and bids must be submitted within one additional month. The law also allows for public, private or mixed ownership companies. The speed and lack of transparency in the selection process, the possibility of increasing the state's share in electricity production and concerns about regulation of nuclear waste will be major sources of concern for bidders, and may give rise to legal challenges.

12. (SBU) BACKGROUND: The GOT's energy program calls for the construction of three nuclear reactors producing 5000 MW. The government has determined that Sinop, a province on the Black Sea coast, is the best location for the first nuclear power plant. Turkey has rich uranium reserves, and a nuclear power plant has been on the GOT's agenda since the early 1960's. Despite lengthy research and detailed preparation efforts, popular opposition, environmental concerns, and tender irregularities led to the cancellation of four prior tender processes (in 1960, 1968, 1974, and 1998).

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Parliament Passes Nuclear Law  
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13. (U) The Turkish Parliament passed the long awaited Nuclear Energy Law on November 8, just two days after the bill's introduction. The Parliament passed an earlier version of the law in May, but it was vetoed by then-President Sezer for technical and legal reasons. This revised version addressed Sezer's criticisms. It will enter into force once it is approved by President Gul and published in the Official Gazette.

The law was passed despite strong criticism of the law from opposition parties and from NGOs, including Greenpeace and the Electrical Engineers Chamber, who collected 100,000 signatures from nuclear power opponents. In addition to general opposition to nuclear power, there was criticism of the lack of transparency in the company selection process.

14. (U) Here are highlights of the new Nuclear Energy Law:

-- The Turkish Atomic Energy Agency (TAEK) is required to set the technical criteria for nuclear plants within one month after the law enters into force. TAEK will also be responsible for regulating and auditing the functioning of the plant until a new agency with these duties is established.

-- The Ministry of Energy and Natural Resources (MENR) will issue regulations within two months after the law enters into force, which list the specifications, company selection process, land allocation, license costs, incentives for infrastructure, fuel supply, production capacity, amount of energy to be purchased, and basis on which the energy unit price will be set. These regulations will enter into force after approval by the Council of Ministers (COM).

-- Immediately after these regulations are issued, the State Electricity Trading Company (TETAS) will announce a tender and bids will be due one month thereafter.

-- Companies will be able to compete for the tender only if they are eligible to meet the technical criteria set by TAEK. TETAS selects the company with the best offer, and submits the decision for COM approval. If the COM approves, it will authorize TETAS to sign a contract with the winning company. The Energy Regulator, EMRA, will then issue a generating license to the company, after which TETAS can conclude an energy sales contract with the company. The contract period cannot exceed 15 years following the date the plant becomes operational.

-- In the energy sales contract, TETAS will agree to buy electricity from the subject company. TETAS redistributes energy under contracts with holders of wholesale and retail trading licenses.

-- MENR and the Treasury Ministry will establish two accounts, the National Radioactive Waste Account (URAH) and the Decommissioning

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Account (ICH), to cover expenses relating to waste management, including: setting up temporary and permanent storage areas; construction of a storage facility; transportation and processing of highly radioactive material; research and development activities for management of nuclear waste; and dismantling costs. The company will pay a 0.15 cent/kWh contribution to each of the two accounts, URAH and ICH.

-- The company is responsible for provision of fuel for production, in line with the criteria set forth by TAEK, and for dismantling of the facility at the end of the operating period of the plant.

-- The law requires the company to have insurance to compensate for any harm caused during construction.

-- In case there is an accident at the facility or harm from handling of nuclear fuel or waste, the GOT will implement the 1960 Paris Convention and other related national/ international legislation.

-- The bill allows great flexibility on ownership structure. It allows the GOT to establish wholly public or mixed ownership partnerships with the winning company, or to authorize existing state companies to participate. The COM also can establish a company to build and operate, or to contract with another company to build and operate the plant. The private sector will hold shares in such a company. The law is subject to the State Economic Enterprises Law.

-- The COM may announce incentives for technological investments and training of personnel.

-- The GOT will provide an easement on public land for the nuclear plant free of charge. The company will be responsible for dismantling the facility and returning the land to the GOT at the end of the operating period in an environmentally appropriate state. The ICH account will be used to cover dismantling costs. If the ICH account is insufficient, the Treasury's compensation for overruns will be limited to 25 percent of the amount accumulated in

the account and the company will be responsible for all additional costs.

-- The law also provides certain incentives for coal plants with more than 1,000MW installed capacity.

(SBU) COMMENT: The complexity of this new law results from both meeting objections raised by President Sezer in his veto of the earlier bill and some measures to counter potential opposition. The inclusion of public and private investment models also indicates the GOT's determination to eventually realize this project, although it also gives rise to criticisms of lack of transparency. The law sets some challenging deadlines for the company selection process, particularly the requirement that bidders submit their bids within one month after the tender is opened. Press reports indicated that the GOT wants to have construction begin in March 2008. That would only be possible if feasibility studies on the Sinop site already have been completed and companies already have their bids more or less ready. The speed and lack of clarity on the selection process, the possibility of increasing the state's share in electricity production and concerns about regulation of nuclear waste will be major sources of concern for bidders, even if the process does not face any legal challenges.

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